

1a

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANICE HAYES,

Plaintiff-Appellant,

v.

VALLEY BANK OF NEVADA, a
Nevada banking corp.,
HERBERT STOUT, E. MORGAN
WISOM, E. PERRY THOMAS, JOHN
WHELTON, individually and as
agents or officers of Valley
bank, WESTERN STATES BANKCARD
ASSOCIATION, a California
corp. TRW, INC., an Ohio corp.
STATE OF NEVADA, JOHN C. MOW-
BRAY, CAMERON BATJER, ELMER
GUNDERSON, NOEL MANOUKIAN and
CHARLES SPRINGER, individually
and as Justices of the NEVADA
SUPREME COURT,

Defendants-Appellees.

FILED

June 21, 1982

No. 81-5630

D.C. No.
79-182

MEMORANDUM

Appeal from the United States District
Court for the District of Nevada

Harry E. Claiborne, District Judge,
Presiding

Argued and submitted May 3, 1982

Before: BROWNING, Chief Judge, TANG and
FARRIS, Circuit Judges

Hayes attempted to relitigate, in
federal district court, the claims she

originally raised in the Nevada State Courts. We affirm the district court's dismissal.

Hayes's Nevada appeal was dismissed for failure to file a timely brief rather than because of Nevada Supreme Court Rule (sic)*46(b). Hayes was not entitled to assume that her pending motion for leave to appear in proper person tolled the time in which to file a brief. She could have preserved her rights by moving for an extension of time or by tendering her brief with her motion for leave to appear.

Since Rule 46(b) was not applied to Hayes, she has no standing to challenge its constitutionality. *Warrth v. Seldin*, 422 U.S. 490, 499 (1975).

Although we decline to award sanctions, we acknowledge a basis for the district court's conclusion that some of Hayes's actions border on being vexatious.

Affirmed.

* Should be: Nev. R. App. P. 46(b).

3a

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JANICE HAYES,

Plaintiff,

vs.

VALLEY BANK OF NEVADA,
etc., et al.,

Defendants.

ENTERED

June 25, 1981

79-182, HEC

MINUTES OF THE
COURT

PRESENT:

THE HONORABLE Harry E. Claiborne

DEPUTY CLERK: Lorraine Murphy

COUNSEL FOR PLAINTIFF(S) None appearing

COUNSEL FOR DEFENDANT(S) None Appearing

MINUTE ORDER IN CHAMBERS XXXXXX

IT IS ORDERED that the Motion to Alter
Order entered on May 18, 1981 and Motion
for Additional Findings of Fact and Con-
clusions of Law, filed May 28, 1981. and
treated as a Motion to Reconsider by the
Court, is denied.

ENTERED

May 19, 1981

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JANICE HAYES,

Plaintiff,

vs.

VALLEY BANK OF NEVADA,
et al.,

Defendants.

CV-LV-79-182,
HECMEMORANDUMDECISION

This matter is before the Court on motions to dismiss, on various grounds, filed on behalf of all Defendants, and further before the Court on Plaintiff's motion to strike and for sanctions.

Before dealing with the more substantive motions, this Court will deal quickly with Plaintiff's motion to strike and for sanctions. Plaintiff argues that Defendants Valley Bank, Stout, Wixom, and Thomas vexatiously delayed the filing of the reply in support of their motion to

dismiss and warrant sanctions under Local Rule 13. It would seem Plaintiff is the pot calling the kettle black. Need the Court remind Plaintiff that she was late in serving copies of the Amended Complaint on several of the Defendants herein, all in violation of the Court's Order of September 29, 1980. Suffice it to say that Plaintiff's motion, itself, borders on the verge of being vexatious and will be denied.

FACTS

On March 27, 1977, Defendant Valley Bank filed suit against the Plaintiff in the Eighth Judicial District Court, in and for the County of Clark, State of Nevada, for alleged non-payment on Plaintiff's MasterCard account, issued through defendant Valley Bank. Plaintiff, acting pro se, filed an Answer to the state action, including what she alleged was a counterclaim, although not denominated as such. The trial court dismissed that action against the

plaintiff, finding that restitution had been made to Valley Bank.

Plaintiff petitioned the trial court to reconsider its dismissal of the action and to allow Plaintiff's "counterclaim." In denying Plaintiff's petition for reconsideration (sic), the trial court necessarily found that whatever Plaintiff filed in answer to Valley Bank's Complaint, it was not a counterclaim. This Court is not inclined, nor is it capable of returning to 1977 and redeciding the issue.

Plaintiff then appealed to the Nevada Supreme Court, which appeal was eventually dismissed pursuant to Rule 46(b), Nevada Rules of Appellate Procedure. Rule 46(b) provides: "No party, except a habeas corpus petitioner, may appear in proper person before the Nevada Supreme Court."

Seeking to have NRAP 46(b) declared unconstitutional, Plaintiff brought a declaratory relief action in the United

States District Court, District of Nevada, against the Nevada Supreme Court and the State of Nevada. Without opinion, Judge Foley dismissed that action, from which an appeal is now before the Ninth Circuit Court of Appeals.

Now a member of the Nevada State Bar and admitted to practice before this Court, Plaintiff has brought the instant action which stems from credit differences with Valley Bank in 1976 and 1977. (sic).

JURISDICTION

Defendants have challenged this Court's jurisdiction over Plaintiff's action on various grounds. It is virtually axiomatic that a court of original jurisdiction can not provide appellate review to a state court decision. *Booker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). Only where a state court judgment is void, either because the state court lacked jurisdiction of the subject matter or of the parties to

the action, may the state court decision be reviewed in federal court. *Daniels v. Thomas*, 225 F. 2d 795, 797 (CA 9, 1955); see also *Rapoport v. Rapoport*, 416 F. 2d 41 (CA 9, 1969).

The issues presented herein were effectively dealt with in *Town of Hopkins, S.C. v. Cobb*, 466 F. Supp. 1212 (D.S.C. 1979):

The lack of appellate jurisdiction by the (federal) district courts is not altered (1) by allegations of the unconstitutionality of a state statute involved in the previous state action between the parties (citations omitted); (2) by a collateral attack asserting violations of 42 U.S.C. Sec. 1983 (citations omitted; or (3) by alleged defects in the state's appellate procedure (citations omitted).

Town of Hopkins, S.C. v. Cobb, supra at 1214.

I find that Plaintiff's action herein is, in effect, an appeal from the state trial court's decision to not recognize her counterclaim in that action. That Plaintiff

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now alleges jurisdiction under several federal statutes does not aid her cause, since claims against any defendants in addition to those originally named in Plaintiff's unrecognized counterclaim were compulsory in nature and thereafter barred. Rule 13, Nevada Rules of Civil Procedure; Rule 13, Federal Rules of Civil Procedure. (sic).

Accordingly, Plaintiff's action should be dismissed with prejudice as to all Defendants.

DATED: This 18th day of May, 1981.

Harry Claiborne
CHIEF JUDGE, U.S. DISTRICT
COURT

7a

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANICE HAYES,

Plaintiff-Appellant,

vs.

THE HONORABLE JUSTICES OF
THE SUPREME COURT OF NEVADA;
JOHN C. MOWBRAY, CAMERON M.
BATJER, ELMER GUNDERSON, NOEL
MANOUKIAN, GORDON THOMPSON,
INDIVIDUALLY and in their
capacities as JUSTICES OF THE
NEVADA SUPREME COURT,

Defendants-Appellees.

FILED

June 17, 1981

CA No. 80-5311

DC No. 79-142

MEMORANDUM

Appeal from the United States District
Court for the District of Nevada

Roger D. Foley, District Judge,
Presiding

Argued and submitted May 3, 1982

Before: BROWNING, Chief Judge, TANG and
FARRIS, Circuit Judges.

We find no merit in Hayes's appeal of
the district court's dismissal of her action.
Her appeal before the Nevada Supreme Court

was not dismissed on the basis of Nev. R. App. P. (sic) 44 and 46(b)*, but at her request.

Hayes asserts no cognizable ground to enjoin the Nevada Supreme Court in the federal district court. *Mitchum v. Foster*, 407 U.S. 225 passim, (1972); *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286-87 (1970). Whether the dismissal was with or without prejudice is no basis for injunctive relief. Even a dismissal without prejudice would not erase the state trial court's decision on the merits.

We find no error in the district court's dismissal for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Affirmed.

- * Nev. R. App. P. 44 is error.
Should be Supreme Court Rule 44.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANICE M. HAYES,

Appellant,

vs.

VALLEY BANK OF NEVADA,

Respondent.

No. 11631

FILED

August 25, 1981

ORDER

Appellant has filed a petition for rehearing of our order denying her motion to reinstate this appeal. The petition for rehearing is denied. See WRAP 40(c).

Appellant also requests a statement of the reasons for our denial of reinstatement of the appeal. The reasons for our original dismissal of this appeal are adequately stated in our order of October 4, 1979. The reasons for denial of appellant's petition for rehearing were adequately stated in our order of

December 3, 1979. As can be seen from those orders, the fact that appellant is now an attorney is irrelevant to the reasons for the dismissal of this appeal.

Finally, appellant requests that the justices voluntarily recuse themselves from hearing these motions and further matters in this case. The request is denied.

It is so ORDERED.

Signed
GUNDERSON

Signed
MANOUKIAN

Signed
BATJER

Signed
SPRINGER

Signed
MOWBRAY

11a

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANICE M. HAYES,

Appellant,

vs.

VALLEY BANK OF NEVADA,

Respondent.

No. 11631

FILED

DEC 3 1979

ORDER

Janice Hayes petitions for a rehearing of our order dismissing her appeal for failure to file briefs pursuant to NRAP 31(a) contending that, since she filed a motion for leave to appear in proper person, see NRAP 46(b), and a motion to waive NRAP 30 and NRAP 32, she is not required to file briefs until we make a decision on those motions.

NRAP 31 provides procedures for gaining extensions of time for filing briefs and for disposition of the appeal.

11a (cont.)

in the event that briefs are not timely filed. There is nothing in NRAP 30, NRAP 32, or NRAP 46(b) to suggest that we will automatically waive the requirements of NRAP 31. Accordingly, we perceive no error in our dismissal of this appeal and hereby deny the petition for rehearing.

It is so ORDERED.

Signed
Mowbray

Signed
Thompson

Signed
GUNDERSON

Signed
Manoukian

Signed
Batjer

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANICE M. HAYES,

Appellant,

vs.

VALLEY BANK OF NEVADA,

Respondent.

FILED

October 4 1979

No. 11631

ORDER DISMISSING APPEAL

Under the provision of N.R.A.P. 31(a), appellant was required to serve and file the opening brief on or before June 25, 1979. She has neither filed the brief nor tendered any explanation for her failure to do so. Under these circumstances, we presume further pursuit of this matter has been abandoned. Accordingly, we

ORDER the appeal dismissed.

Mowbray C.J.

Thompson J.

BATJER J.

13a

CASE NO. A 166497

DEPT. III

CIVIL DOCKET "E"

FILED

OCT 8, 1978

IN THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE COUNTY

OF CLARK

* * * * *

VALLEY BANK OF NEVADA,
a Nevada banking corporation,

Plaintiff,

vs.

JANICE M. HAYES,

Defendant.

ORDER

The Defendant's MOTION FOR
SEPARATE TRIAL OF DEFENDANT'S COUNTER-
CLAIM AND MOTION FOR LEAVE TO AMEND AND
SUPPLEMENT COUNTERCLAIM having come on
for hearing before the above entitled
court on the 15th day of September, 1978,
and the Defendant, JANICE M. HAYES,

appearing in proper person and the Plaintiff being represented by JOHN C. WHELTON, ESQ. of the firm of FREEDMAN & WHELTON, and Court having heard the oral argument of Defendant and Plaintiff's counsel, and the Court having examined the Points and Authorities, Affidavits and the Pleadings on file in this matter, and the Court having found that no Counterclaim was filed by the Defendant in this action, and the Court being fully advised in the premises and good cause appearing therefore:

IT IS HEREBY ORDERED that Defendant's MOTION FOR SEPARATE TRIAL OF DEFENDANT'S COUNTERCLAIM AND MOTION FOR LEAVE TO AMEND AND SUPPLEMENT COUNTERCLAIM is denied.

DATED this 6th day of October, 1982

Joseph Paulikowski
DISTRICT JUDGE

15a

CASE NO. A166497 TITLE VALLEY BANK OF
NEVADA V. JANICE HAYES

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES and HEARING

8-14-78

JOSEPH S.
PAVLIKOWSKI

DEFENDANT'S MOTION FOR
SEPARATE TRIAL OF DEFENDANT'S
COUNTERCLAIM AND MOTION FOR
LEAVE TO AMEND AND SUPPLEMENT
COUNTERCLAIM and STATUS CHECK

Plaintiff neither present

nor represented by counsel

FREEDMAN & WHELTON.

Defendant neither present

nor represented by counsel.

By the Court ordered, this

matter is continued until

9-15-78, 9:00 A.M. Dept. No.3

9-15-78

JUDGE JOSEPH
PAVLIKOWSKI

Not reported

DEFENDANT'S MOTION FOR SEP-

ARATE TRIAL OF DEFENDANT'S

COUNTERCLAIM AND MOTION FOR

LEAVE AMEND AND SUPPLEMENT

COUNTERCLAIM and STATUS CHECK

/ / /

15a (cont.)

Plaintiff represented by

JOHN C. WHELTON, ESQ.

DEFT. JANICE MARIE HAYES

PRESENT WITHOUT BENEFIT OF

COUNSEL, IN PROPER PERSON.

DEFT. PRESENTED HER MOTION

AND ARGUED IN SUPPORT

THEREOF.

ARGUMENT IN OPPOSITION BY

MR. WHELTON.

BY THE COURT ORDERED, THIS

MATTER IS UNDER ADVISEMENT.

12-27-78
JOSEPH S.
PAVLIKOWSKI
DEPT. III

DEFENDANT'S MOTION TO REHEAR
AND RECONSIDER THE ORDER
MADE ON 10/6/78.

DEFENDANT'S MOTION TO AMEND
OR VACATE THE ORDER ENTERED
ON 6/9/78.

DEFENDANT'S MOTION TO STRIKE
THE POINTS AND AUTHORITIES
AND AFFIDAVITS OF PLAINTIFF.

Plaintiff represented by

John C. Whelton.

Defendant present in proper
person.

/ / /

MINUTES --- CIVIL

12-27-78

(cont.)

JOSEPH S.
PAVLIKOWSKI
JUDGE

Court stated it believed it
had ruled on these motions

DEPT. III

previously. Argument by
Defendant. Argument in
opposition by Mr. Whelton.
BY THE COURT ORDERED, the
orders will stand. Defen-
dant moved to rehear, and
COURT ORDERED, motion is
denied.

CASE NO. A 166497

FILED

JUNE 9 1978

IN THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE COUNTY
OF CLARK

VALLEY BANK OF NEVADA,
a Nevada banking corporation,
Plaintiff,

vs.

JANICE M. HAYES,
Defendant.

ORDER

IT IS HEREBY ORDERED that the
above matter be dismissed, with prejudice,
as to the Defendant JANICE M. HAYES, as
the Defendant, JANICE M. HAYES, has made
full restitution to the Plaintiff.

DATED and DONE this 8th day of
June, 1978.

Joseph Pavlikowski
DISTRICT JUDGE

17a

CASE NO. A 166497

FILED

DEPARTMENT III

JUNE 8 1978

CIVIL DOCKET "E"

IN THE EIGHTH JUDICIAL DISTRICT

COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

* * * * *

VALLEY BANK OF NEVADA,
a Nevada banking corporation,)

Plaintiff,)

vs.)

JANICE M. HAYES,)

Defendant.)

CONSENT TO
DISMISSAL
OF ACTION
WITH
PREJUDICE

The undersigned attorney for
Plaintiff in the above-entitled
action hereby consents to a dis-
missal of this action, with preju-
dice, as to the Defendant, JANICE M.
HAYES as full restitution was made to
Plaintiff by the Defendant.

DATED this 8th day of June, 1978.

FREEDMAN & WHELTON

By John C. Whelton

JOHN C. WHELTON, ESQ.

Attorney for Plaintiff

NO. 11747

V.M. MARKOFF aka MIKE M. MARKOFF,

Appellant,

vs.

AMERICAN HERITAGE LIFE INSURANCE CO,
SUSAN FRANCIS AND RENEE SADKO,

Respondents.

Appeal from the EIGHTH Judicial District
Court, CLARK COUNTY, Nevada

Joseph S. Pavlikowski, Judge

Notice of Appeal filed March 26, 1979

Judgment appealed from filed April 27, 1978

1979

April 9 Filing Record on Appeal, Vols.
1 and II.

May 16 Filing Appellant's Opening
Brief

17 Filing Motion to Strike

22 Filing Markoff's Response to
American's Motion To Strike
The Opening Brief.

June 12 Filing Motion for Extension of
Time to File Brief of Respondent.

13 Filing Orders respondents may
have to and including two weeks
after the Court rules on its
Motion to strike to file brief.

18(a) cont.

Docket sheet, Nevada Supreme Court.
VASIL M. MARKOFF aka MIKE MARKOFF
v. AMERICAN HERITAGE INSURANCE CO, ET AL.

1979

June 14 Filing Order. We grant
respondent's motion to strike
appellant's opening brief, filed
in pro per.

19 . . .

29 Filing Order appellant's in pro
per motion for further orders
is denied.

29

29 Filing Order, "ORDER it dismissed."

July 10 Filing Notice of Appeal from the
Supreme Court of the State of
Nevada to the Supreme Court of
the United States

IN THE SUPREME COURT OF THE STATE
OF NEVADA

IN THE MATTER OF THE AMENDMENT OF THE
NEVADA RULES OF APPELLATE PROCEDURE, RULE
46 RELATING TO THE PRACTICE OF LAW BEFORE
THE SUPREME COURT.

ORDER AMENDING RULE 46(b), NEVADA
RULES OF APPELLATE PROCEDURE

IT IS HEREBY ORDERED that Rule 46(b) of
the Nevada Rules of Appellate Procedure
be, and the same hereby is, amended as
follows:

(b) Appearnces in Proper Person. (No
party, except a habeas corpus peti-
tioner, may appear in proper person
before the Supreme Court.) *With leave
of the Supreme Court, a party may file,
in proper person, written briefs and
papers submitted in accordance with
these rules.*

. . .

Dated this 22nd day of October, 1981.

BY THE COURT

SUPREME COURT RULES

Rule 44. PERSON MAY APPEAR IN HIS OWN
BEHALF.

Nothing in these rules shall be
so construed as to prevent any person
from appearing in his own behalf in
any court in this state except the
supreme court.